

## REMARKS

Applicant's attorney wishes to thank the Office for the substantive review provided in this case. The Office has rejected all claims in the present application. Specifically:

- The amendment of August 8, 2007 has been objected to under 35 U.S.C. § 132(a) as introducing new matter into the specification;
- Claims 59-67 have been rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement;
- Claims 59-67 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicant regards as the invention;
- Claims 59-65 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,044,360 (Picciallo) in view of U.S. Patent Application Publication No. 2001/0000535 (Lapsley); and
- Claims 66 and 67 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Lapsley in view of Picciallo.

Claims 59, 66 and 67 have been amended. No new matter has been added as a result of these amendments. Upon entry of this Preliminary Amendment, claims 59-67 will remain pending. For the reasons set forth below, Applicant requests that the above-listed rejections be withdrawn.

### **Objection under 35 U.S.C. § 132(a) and Rejection under 35 U.S.C. § 112, ¶ 1**

Applicant has amended claims 59 and 66 in light of the Office's objection to the prior amendment of such claims. Applicant notes that support for the present amendments may be found at least in paragraph 0049 of the originally filed specification. Accordingly, Applicant respectfully requests the objection to the specification under 35 U.S.C. § 132(a) and the rejection under 35 U.S.C. § 112, first paragraph, be withdrawn.

### **Rejection under 35 U.S.C. § 112, ¶ 2**

Applicant has amended claims 59, 66 and 67 to more particularly point out and distinctly claim the subject matter that Applicant regards as the invention. In particular, Applicant has amended claims 59, 66 and 67 to replace "biological sample" with "biological identifier." Support for the amendment may be found at least in paragraph 0055 of the originally filed

specification. Accordingly, Applicant respectfully requests that the rejection under 35 U.S.C. § 112, second paragraph, be withdrawn.

#### **Claims 59-65**

Applicant submits that amended independent claim 59 is nonobvious over Picciallo in view of Lapsley because the cited references, either alone or in combination, fail to teach or suggest each and every limitation of claim 59. *See* MPEP § 2143 (stating that one of the elements of a *prima facie* case of obviousness under § 103(a) is that the prior art references must teach or suggest all the claim limitations). More particularly, Applicant submits that the combination of Picciallo and Lapsley fails to teach or suggest, among other things, “verifying an identity of the third party, said verifying being based on a comparison at said merchant device of the data derived from the proffered biological identifier to said registered biological identification data,” as recited in claim 59.

The Office properly states that Picciallo does not include the specific details about a biological sample. Accordingly, Picciallo cannot teach verifying an identity of a third party based on a comparison at a merchant device of data derived from a proffered biological identifier to a registered biological identifier.

Lapsley does not resolve the deficiencies of Picciallo. Lapsley discusses a method and device for tokenless authorization of an electronic payment between a payor and a payee using an electronic third party identifier and at least one payor biometric sample. *See* Lapsley at Abstract. In particular, Lapsley discloses the use of a data processing center (DPC) that is used to identify the payor and the payee in a transaction. *See id.* at [0102]. The DPC receives messages from party identification apparatuses (PIAs) and determines the identities of parties to a transaction using an identification module (IM). *See id.* at [0105]. The IM includes subsystems that can identify parties in a number of ways including by biometric data and a personal identification number and/or by biometric data alone. *See id.* at [0116]-[0118]. Although Lapsley discloses different methods of communication between the PIAs and the DPC, Lapsley merely describes network configurations in which the DPC is remotely located from the PIAs. *See id.* at [0098]-[0100]. Lapsley does not describe receiving registered biological identification data at the PIA or using the registered biological identification data to verify an identity of a third party at the PIA.

In contrast, claim 59 requires that the identity of a third party be verified based on a comparison of data derived from a proffered biological identifier to registered biological identification data at a merchant device. Claim 59 further requires that the merchant device be the device at which a system identification number and a biological identifier proffered by the third party are received. Lapsley merely teaches receiving a biological sample at a PIA, transmitting the biological sample to a DPC, which is remote from the PIA, and verifying the identity of a party at the DPC. As such, Lapsley does not teach or disclose “verifying an identity of the third party, said verifying being based on a comparison at said merchant device of the data derived from the proffered biological identifier to said registered biological identification data,” as required by claim 59.

For at least this reason, Applicant submits that independent claim 59 is nonobvious over the combination of Picciallo and Lapsley. Applicant further submits that claims 60-65, which depend from and incorporate all of the limitations of claim 59, are also nonobvious over the cited references. *See* MPEP § 2143.03 (stating that if an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is nonobvious). Accordingly, for the reasons set forth hereinabove, Applicant requests that the § 103(a) rejections associated with claims 59-65 be withdrawn.

#### **Claims 66 and 67**

Applicant submits that amended independent claim 66 is nonobvious over Picciallo in view of Lapsley because the cited references, either alone or in combination, fail to teach or suggest each and every limitation of claim 66. *See* MPEP § 2143. More particularly, Applicant submits that the combination of Picciallo and Lapsley fails to teach or suggest, among other things, “verifying an identity of the third party, said verifying being based on a comparison at said merchant device of the data derived from the proffered biological identifier to registered biological identification data that corresponds to said system identification number,” as recited in claim 66.

For substantially the same reasons as set forth above in reference to claim 59, Applicant submits that independent claim 66 is nonobvious over the combination of Picciallo and Lapsley. Applicant further submits that claim 67, which depends from and incorporates all of the limitations of claim 66, is also nonobvious over the cited references. *See* MPEP § 2143.03.

Accordingly, for the reasons set forth hereinabove, Applicant requests that the § 103(a) rejections associated with claims 66 and 67 be withdrawn.

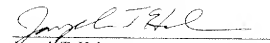
All of the stated grounds of rejection have been properly traversed, accommodated or rendered moot. There being no other rejections, Applicant respectfully requests that the current application be allowed and passed to issue.

If the Examiner believes for any reason that personal communication will expedite prosecution of this application, I invite the Examiner to telephone me directly.

**AUTHORIZATION**

No fee is believed to be due for this submission. However, the Commissioner is hereby authorized to charge any additional fees which may be required for this Preliminary Amendment, or credit any overpayment, to deposit account no. 50-0436.

Respectfully submitted,  
PEPPER HAMILTON LLP

  
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Joseph T. Helmsen  
Registration No. 54,163

One Mellon Center, 50th Floor  
500 Grant Street  
Pittsburgh, PA 15219-2505  
Telephone: (412) 454-5000  
Facsimile: (412) 281-0717  
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